COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Writ Petition No. 517 of 2003 (S/B)

Ajay Kumar Singh ...**Petitioner**

Versus

State of Uttaranchal through Chief Secretary, Uttaranchal Dehradun

...Respondent

Approved for reporting.

~~Not approved for reporting.~~

Date: November 28, 2006

(P.C. Verma, J.).

(B.C. Kandpal, J.)

Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Writ Petition No. 517 (S/B) of 2003.

Ajay Kumar Singh,
Principal, Government Inter College,
Mussoorie (Uttaranchal).

..... Petitioner.

Versus

State of Uttaranchal
through Chief Secretary, Uttaranchal,
Dehradun (Uttaranchal).

..... Respondent.

Sri Lalit Kumar Advocate, learned counsel for the petitioner,
Learned Standing Counsel for the respondent.

Date: November 28, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble P.C. Verma, J.)

The petitioner appeared for the Combined Civil Services Examination, 1998 conducted by the Uttar Pradesh Public Service Commission. His Roll number was 130504. His date of birth was 25.07.1974. His educational qualification was a post-graduate in Arts. Page 2 of Annexure 4 shows the post preferred by the petitioner. They are (1) Deputy Collector, (2) Deputy Superintendent of Police, (3) Asstt. Regional Transport Officer, (4) Trade Tax Officer, (5) Additional District Development Officer (Social Welfare), (6) Associate District Inspector of Schools/District Basic Education Officer i.e. B.S.A. (Basic Shiksha Adhikari)/other

equivalent Administrative Post in the Hill cadre. There are other posts also preferred by the petitioner, but they are not mentioned as they are not relevant for the purpose of this case.

2. The result of the examination was published on 23.11.1998. Annexure R. A. 2 produced alongwith the rejoinder affidavit shows that the petitioner's Roll No. 130504 was included among the candidates selected for the executive group. There are two executive groups mentioned and the petitioner is included in the second executive group. The other groups mentioned in the Annexure R.A. 2 are Vanijya (Commerce) group and Vishesh Bharti (special recruitment) group. In the result published in Dainik Jagran on 25.12.1998 as seen from Annexure R.A. 2, the petitioner's Roll Number was included along 187 candidates selected. Annexure 5 is copy of the result published in the same news paper, in which the roll number and the name of the petitioner are shown under the heading posts Basic Shiksha Adhikari (H). It means that the petitioner was selected/allotted for the post of Basic Shiksha Adhikari (Hill cadre). As per Annexure P-6 order dated 27.09.1999, the petitioner was appointed as Principal, G.I.C. Dangi (Pauri Garhwal). Later by Annexure P-8 order dated 27.12.1999, Annexure P-6 order was modified to the extent of posting the petitioner as Principal, Government Intermediate College, Mussoorie. Since then, the petitioner has been working as Principal, Government Intermediate, Mussoorie.

3. The petitioner filed writ petition no. 445 of 2003 praying for a direction to the State of Uttaranchal to prepare a tentative seniority list of P. C. S. Executive

Branch Officers belonging to 1998 batch. The said writ petition was disposed of vide Annexure 1 judgment dated 26.08.2003 observing that the writ petition is premature. However, it was made clear that the said judgment will not come in the way of the petitioner moving this Court again if the Government does not move in time after petitioner makes a representation. In the light of Annexure P-1 judgment, the petitioner submitted Annexure P-2 representation dated 05.09.2003. When there was no response from the respondent, he filed the present writ petition praying for a direction to the respondent to prepare a tentative seniority list of the officers belonging to 1998 batch of P.C.S. Executive Branch Officers indicating the petitioner's seniority inter se his batch mates, followed by prepare of the final seniority list, within a peremptory time period to be fixed by the Court. While admitting the writ petition on 28.11.2003, this Court directed the respondent to take decision on the preparation of tentative seniority list within three weeks. However, no tentative seniority list was prepared within the time stipulated by the Court. Hence, the petitioner filed Civil Contempt Petition No. 7370 of 2004. Thereupon, a tentative seniority list of Uttaranchal Educational Service (General Education Cadre) was prepared and produced alongwith the counter affidavit in the contempt case. The petitioner's name is included in the said list at serial no. 249. The petitioner's name is shown as Principal, Government Inter College, Mussoorie.

4. The grievance of the petitioner is that instead of preparing seniority list of P. C. S. (Executive Branch) Officers of 1998 batch and including him in the said

seniority list, the respondent has prepared the seniority list of U.P. Education Services (General Education Cadre) officers and included him in that list. According to the petitioner, he is entitled to be treated as a member of the U.P. Civil Service (Executive Branch). According to the respondent, the petitioner was not selected for the U.P. Civil Services (Executive Branch) and he was selected only for the U.P. Educational (General Education Cadre) Service. In support of the stand of the respondent, the learned Standing Counsel pointed out that in Annexure P-5, the petitioner was shown among candidates selected for the post of Basic Shiksha Adhikari (Hill Cadre); that he was appointed as Principal, G.I.C. Dangi and later as Principal G.I.C. Mussoorie. It is pointed out that the post of Basic Shiksha Adhikari and Principal, Government Inter College are inter-changeable posts. Learned Standing Counsel also invited our attention to Rule 5 of the U.P. Educational (General Education Cadre) Service Rules, 1992 (Annexure P-7), according to which, 50% of the posts of Basic Shiksha Adhikaris are to be filled up by direct recruitment by combined Civil Services Examination to be conducted by the Public Service Commission. He also pointed out that in the U.P. Civil Service (Executive Branch) Rules, 1982 (Annexure P-9), the posts of Basic Shiksha Adhikari is not included. It is contended that having been selected for appointment as Basic Shiksha Adhikari and having accepted without protest appointment as Principal Government Inter College, it is not open to the petitioner to contend that he should be treated as a member of the U.P. Civil Services (Executive Branch).

5. At the same time, learned counsel for the petitioner pointed out that the essential qualifications for the posts of Principal, Government Inter College are (1) post graduate degree, (2) L.T. diploma /B.T. /B.Ed., (3) Experience mentioned in Rule 8 of the U.P. Educational (General Education Cadre) Service Rules. He points out that the petitioner is a mere postgraduate and he did not have any L.T. diploma or B.T. or B.Ed. and required experience and hence he could not have been appointed to the post of Principal, Government Inter College. Learned counsel also points out that according to Rule 10 of the U.P. Educational (General Education Cadre) Service Rules, the minimum age required for the post of Principal is thirty years and the petitioner had not completed the age of thirty years when he was appointed as Principal. For that reason also, he was not eligible to be appointed as Principal.

6. In the above circumstances, the basic issue that arises in the writ petition is whether the petitioner was selected for appointment to the U.P. Civil Services (Executive Branch) or to the Uttaranchal Educational Service (General Service Cadre).

7. The conduct of business and regulation of procedure of Uttar Pradesh State Public Service Commission was being done by the Act known as the Uttar Pradesh State Public Service Commission (Regulation of Procedure and Conduct of business) Act, 1974 which had repealed the earlier Acts providing for certain matters relating to procedure of the State Public Service Commission and the Conduct of the business. Act of 1974 was repealed vide Section 14 of the Uttar

Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985 which was enacted by the State legislature to provide for certain matters relating to the procedure of the State Public Service Commission and the Conduct of Business titled as Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985. Section 14 of the said Act 1985 reads as under:-

> **"14. Repeal and savings.-(1)** (i) The Uttar Pradesh State Public Service Commission (Regulation of Procedure and Conduct of Business) Act, 1974 is hereby repealed.
>
> (ii) Notwithstanding such repeal-
>
> (a) the Uttar Pradesh Public Service Commission (Procedure and Conduct of Business) Rules, 1976 shall, unless superseded by the Commission, continue to be in force except in so far as they are inconsistent with the provisions of this Act,
>
> (b) All acts, orders, decisions, recommendations, including the conduct of any interviews, selection or competitive examination, or declaration of any results thereof by or on behalf of the Commission in accordance with the Act, referred to in clause (i) of sub-section (1) or the rules framed thereunder, shall be deemed to be, and always to have been, valid and any proceedings in relation to any interviews, selection or competitive examination pending on the date of commencement of this Act may be continued and completed in accordance with the provisions of the Act and the rules in force prior to such commencement.
>
> (2) (i) The Uttar Pradesh State Public Service Commission (Regulation of Procedure) Ordinance, 1985 (U.P. Ordinance No. 13 of 1985), is hereby repealed.

(ii) Notwithstanding such repeal, anything done or any action taken under the Ordinance, referred to in clause (i) of sub-section (2), shall be deemed to have been done or taken under this Act, as if this Act were in force at all material times."

8. Section 11 of Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985 provides that Commission may make rules not inconsistent with the provisions of this Act for the regulation of its procedure.

9. The U.P. Public Service Commission (Procedure and Conduct of Business) Rules, 1996 is still in force by virtue of sub clause (i) of clause (1) and sub clause (ii) of clause (1) of Section 14 of State Public Service Commission (Regulation of Procedure) Act, 1985.

10. Rule 29 and Rule 30 of the Uttar Pradesh Public Service Commission (Procedure and Conduct or Business) Rules, 1976 provides for conduct of examinations. Both the said rules read as under:-

> **"29.** (i) The Commission shall conduct examinations for the various posts to be filled by competitive examination;
>
> (ii) The Commission may hold **combined competitive examinations for selection to various posts under the purview of the Commission."**

Rule 49 of the said Rules provide that the Commission shall decide the number of candidates to be called for interview to appear before a board or boards on any day.

Rule 53 provides for selection by direct recruitment which reads as under:-

> "**53.** The advertisement for selection to various posts by direct recruitment shall be issued and application from eligible candidates invited by **the Commission in accordance with the provisions of service rules** or adhoc principles agreed to by the Commission where there are no service rules."

11. Thus it is seen that the selection by the Commission to the various posts by direct recruitment shall be made according to the provisions of service rules which governs the category of services advertised in a combined examination.

12. Chapter IX of the said Rules provides for residuary matters, interpretation and amendment in the rules. Thus chapter contains Rules 75, Rule 76 and Rule 77 which read as under:-

> "**75.** The Commission may deal in such manner as they deem fit with any matter not specifically provided for in these rules.
>
> **76.** If any doubt arises as to the interpretation of these rules, the interpretation made by the Commission shall be final.
>
> **77.** These rules may be amended by the Commission as and when deemed necessary and such amendments shall take effect immediately or from such date as the Commission may appoint in this behalf."

13. Thus, if any matter is left and not covered under the rules, the Commission may clarify it by the resolution of the Board.

14. The Public Service Commission makes the allotment of the candidates to be recommended on the basis of the selection held by it for appointment in different services on the basis of their merit and the preference given by them for the respective service which is clear from the perusal of office memorandum issued by the Personnel Department-1, Government of Uttar Pradesh, dated 30 January, 1979 which has been brought on record by the learned Additional Chief Standing Counsel for the State of U.P. alongwith his letter dated 18.11.2006.

15. There was certain doubt regarding the clarification relating to allotment of the candidates declared successful in Combined State Services Examination, 1989, the Commission by majority taken the decision on 20.09.1991, minutes of which has been brought on record by the learned Addl. Chief Standing Counsel for the State of U.P. A perusal of the said resolution of the Board makes it clear that the posts shall be allotted to the candidates according to their merit in accordance with the serial in which the posts have been advertised.

16. Applying these principles as stated above, the posts were allocated to the selected candidates on the basis of their merit-cum-preference in order in which the posts have been advertised for holding the combined examination. In the present case, the advertisement (Annexure P-3) is on record and the posts have been advertised in the following order showing the number of posts against the name of the post:-

1- **Deputy Collector-23 (03 posts for the special selection of scheduled tribes candidates),**

2- **Deputy Superintendent of Police-12,**

3- **Asstt. Regional Transport Officer-37,**

4- **Trade Tax Officer-10,**

5- **Addl. District Development Officer (social Welfare)-11,**

6- **Associate District Inspector of Schools/District Basic Education Officer and other equivalent administrative posts-13 posts (for Hill Cadre) in the Uttar Pradesh Education Service General Education Cadre,**

7- **Treasury Officer/Accounts Officer-49**

8- **Executive Officer in Category-I (Asstt. Urban Development Officer), U.P.Palika Service-07 (Special selection for the candidates of scheduled castes and backward castes),**

9- **District Social Welfare Officer-10,**

10- **District Audit Officer-13,**

11- **Government District Selection Officer-11,**

12- **Assistant Accounts Officer-03, (02 posts for U.P.Palika Services (Plain cadre in which 01 post was reserved for scheduled caste candidate and 01 post was reserved for backward class),**

13- **Deputy Regional Marketing Officer-10,**

14- **Trade Tax Officer-Category II-18.**

17. The Commission recommended the candidates on the basis of merit-cum-preference in the order the posts have been advertised. Thus, the highest meritorious candidate giving preference to the post of Deputy Collector were allotted posts of Deputy Collector and thereafter in order quoted above.

18. The application form of the petitioner is annexed with the writ petition and is on record as Annexure No. P-4. On the basis of said principle the petitioner was given appointment on 27th December, 1999. The petitioner thereafter joined the service and is continuing in the service which is governed by the Rule known as Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992. The post mentioned at serial No.18 of Rule 5 of the said Rules was advertised by the Commission which finds place in the advertisement at serial No.6.

19. The petitioner has stated false and misleading facts in the writ petition and on the basis of those facts has prayed for a writ of mandams to determine the seniority of the petitioner in the Uttar Pradesh Civil Service (Executive Branch) Rules, 1982 which is evident from the prayer clause based on grounds 'A' & 'E' in view of factual statement made in Part-X Paras 13, 14 & 15 of the writ petition. The said Paras 13, 14 & 15 are reproduced as under:-

> "(xiii)That, consequently, the conditions of the service of the petitioner are required to be regulated by The U.P. Civil Services (Executive Branch) Rules, 1982, i.e. the service rules of that branch of the State service for which he had originally qualified through competitive examination. A copy of the said 'The U.P. Civil Services (Executive Branch) Rules, 1982 is annexed hereto as Annexure P-9. It may be pertinent to point out that the scales of pay mentioned under Part VII of the said Rules,

have since been revised and the same stand amended as follows:-

Grade	**Old Scale**	**New Scale**
Ordinary Grade	Rs.2200-4000	Rs. 8000-13500
Time Scale	Rs. 3000-4500	Rs. 10000-15000
Selection Grade	Rs. 3700-5000	Rs. 12000-16500
Special Scale	Rs. 4500-5700	Rs. 14300-18300
Higher Scale	Rs. 5100-5700	Rs. 16400-20000
Highest Scale	Rs. 5900-6700	Rs. 18400-22400

(xiv) That, as per Rule 4(2) read with the Appendix of the above Service Rules, the petitioner would become due for raise in his pay from 'ordinary scale' to 'time scale' on completion of 5 years of regular and satisfactory service, and also for corresponding promotion to the next rank of District Inspector of Schools, which would require determination of his seniority in the appropriate 'seniority list' much before that date.

(xv) That, vide Rule 23 of the above Service Rules, the seniority of the petitioner is required to be determined as per Uttar Pradesh Government Servants Seniority Rules, 1991, a copy of which is annexed hereto as Annexure P-10."

20. This statement of fact proves abuse of process of law as the petitioner was never selected on the post of Deputy Collector.

21. The post of Deputy Collector is governed by the Uttar Pradesh Civil Service (Executive Branch) Rules,

1982. This post is in the said Rule with a slight difference in the nomenclature of the rules which is pre-constitutional rules notify in the year 1940 known as **'Rules regulating appointment to and the conditions of service of the Executive Branch of the United Provinces Civil Service'**. Part II of the said Rules contains Rule 4 which is reproduced as under:-

"4.- The sanctioned strength of the service is as follows:

Deputy Collector,	selection grade	..	..	12
Ditto	ordinary grade	..	..	369
	Total		..	381"

Part II of the said Rules provides sources of recruitment and under Rule 5, Part II sources of recruitment to the service have been provided. Sub –rule (iii) of Rule 5 of Part-II of the said Rules is reproduced here as under:-

(iii) by promotion from the subordinate service of Tehsildars on the recommendation of the board of Revenue,"

22. Rule 13 provides procedure for recruitment by competitive examination and Part VI provides procedure for recruitment by nomination.

23. This Rule of 1940 was superseded by the Rule known as United Provinces Civil Services Rules, 1941 and thereafter it was amended several times and the Uttar Pradesh Civil Services (Executive Branch) Rules, 1982 as amended upto 1992 governs the service of Deputy Collector.

24. It is relevant here to reproduce Para 26 (1) contained in Chapter 5 of the Manual of Government Orders issued in 1981 as under:

> **"26. Indian Administrative Service. (1)** The Indian Administrative Service has been constituted under the All India Services Act, 1951 (No.LXI of 1951). It is the main executive wing of the administrative machinery of the State. All matters relating to this service e.g., recruitment, training, probation, confirmation, promotion, leave, conduct, discipline, provident fund, medical attendant, traveling allowance, retirement and pension, etc. are regulated by the rules and regulations framed by the Government of India from time to time and published by them in the compilation called 'The All India Services Manual'. The strength of I.A.S. Cadre is fixed by the Government of India and is normally subject to a triennial review.
>
> There is a promotion quota of 33-1/2 per cent in the senior scale of the I.A.S. to which officers from the State Civil Service are appointed."

25. The said Manual of Government Orders also clarifies the above position in Para 27, contained in Chapter 5, which is reproduced as under:-

> **27. Deputy Collectors. (1)** The U.P. Civil Service (Executive Branch) is the next important service on the executive side after the I.A.S. The members of this service are known as Deputy Collectors. Recruitment to this service is largely made from the open

market through the Public Service Commission and also by promotion, from amongst permanent Tahsildars.

(2) These officers work in the districts in various capacities like Additional District Magistrate, Sub-Divisional Magistrate, District Supply Officer, District Planning Officer, Settlement Officer, (consolidation) etc. They also hold different assignments as Deputy/Joint Heads in the offices of Heads of Departments, as Under Secretary/Deputy Secretary /Joint Secretary in the Secretariat and as executives in various public enterprises. They serve as the second line in the district administration of the State and form an important executive wing.

(3) The recruitment and conditions of service of these officers are regulated by the U.P. Civil Service (Executive Branch) Rules. Particulars regarding the examination and training of Junior officers of this services are given in the "Rules for the conduct of departmental examinations and training of junior officers" which are published separately.

(4) All matters concerning the recruitment, training, postings and transfers, promotion, punishment, retirement and pension, etc. of these officers are dealt with directly by the Appointment Department."

26. The similar provision is contained in the **Rules regulating appointment to and the conditions of service of the Executive Branch of the United Provinces Civil Service** in which in case of recruitment by promotion, the promotion is to be made 33-1/2 per cent from the State Civil Service. Sub rule (iii) of Rule 5 of Part II of the said Rules is reproduced as under:-

> "(iii) by promotion from the subordinate service of Tahsildars on the recommendation of the Board of Revenue,"

27. On the effort of learned Additional Chief Standing Counsel for the State of U.P. the position has been further clarified lastly on November 16, 2006, vide Office Memorandum of Government of Uttar Pradesh issued by Appointment Section-3, Lucknow, No. 4667/2-3-2006, dated 16.11.2006. The said office memorandum is on record in Hindi and is reproduced in English as under:-

> "In order to clarify the doubts raised at different levels, the undersigned has been directed to say that the incumbents of the ordinary grade in the pay-scale of 8,000-13,500 as mentioned under Rule-24 of Uttar Pradesh Civil Services (Executive Branch) Rules, 1982 (as amended) as generally posted as UP-Zila Adhikari (Deputy Collector)/special Land Acquisition Officer/Assistant Record Officer/Settlement Officer Consolidation / Government/Board of Revenue/or in other Department of Government as Officer on Special Duty or on equivalent post.
>
> Sd/- Umesh Sinha
> Secretary"

28. Thus, the petitioner has filed a false affidavit of facts state d in Part-X, Paras (xiii), (xiv) & (xv) of the writ petition and is liable to be prosecuted for perjury and the abuse of process of law in view of the fact which is warranted in the present case as the time consumed by the learned counsel for the petitioner on the basis of these facts stated by the petitioner were as many as twenty days. The petition was presented on 24.11.2003. The Division Bench consisting of Hon'ble the Chief Justice heard arguments in this case finally on 06.07.2005 & 07.07.2005 and reserved the judgment. It was released for rehearing on 02.01.2006. We heard the petition atlength on 30.03.2006 and reserved the judgment. We could deliver the judgment after receipt of the letter dated 18.11.2006 alongwith the relevant documents sent by Sri S.P.S. Panwar, learned Additional Chief Standing Counsel for the State of U.P.

29. Thus, it is clear and established that the petitioner was not selected and appointed on the post of Deputy Collector which is governed by Uttar Pradesh Civil Service (Executive Branch) Rules, 1982. It is further observed that the petitioner cannot claim seniority on the basis of statement of fact that though he was selected for Basic Shiksha Adhikari (B.S.A.) and in the Education cadre he has been posted as Principal of Intermediate College. From the perusal of Clause 18 of Rule 5 of the Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 it is clear that the post is contained in the service but since the petitioner's position is not clarified the petitioner could have corrected its mistake by filing a representation. Instead of doing so the petitioner made it a basis to get by the pressure made in

the writ petition what he could not get in the selection held by the Public Service Commission. This case is glaring misuse of process of law.

30. Thus, a cost of Rs. 20,000/- (Rupees twenty thousand) is imposed on the petitioner and a cost of Rs. 10,000/- (Rupees ten thousand) is also on the State of Uttaranchal as the petitioner has stated the misleading facts and the State of Uttaranchal has not brought the correct position as we have stated in the judgment regarding the Deputy Collector.

31. We appreciate the conduct of the learned Additional Chief Standing Counsel for the State of U.P. who assisted us in an effective manner in coming to a right conclusion. Cost so recovered from the petitioner and State of Uttaranchal shall be paid to the Uttaranchal State Legal Services Authority.

32. The petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma,J.)**

P.Singh